

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 26, 2025

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

OLGA C.-V.,¹

Plaintiff,

v.

FRANK BISIGNANO
COMMISSIONER OF SOCIAL
SECURITY,²

Defendant.

NO: 1:24-CV-03213-RLP

ORDER REVERSING AND
REMANDING THE
COMMISSIONER'S DECISION FOR
FURTHER ADMINISTRATIVE
PROCEEDINGS

BEFORE THE COURT is an appeal from an Administrative Law Judge (ALJ) final decision denying disability income benefits under Title II and supplemental security income under Title XVI of the Social Security Act. ECF No.

¹ Plaintiff's first name and last initial are used to protect her privacy.

² Frank Bisignano became the Commissioner of Social Security on May 7, 2025. Pursuant to Rule 25(d) of the Rules of Civil Procedure, Frank Bisignano is substituted for Leland Dudek as the Defendant in this suit.

1 8. The Court considered the matter without oral argument. For the reasons discussed
2 below, the Court concludes the ALJ committed harmful legal error in evaluating Ms.
3 V.'s symptom testimony and the medical opinions. Therefore, Ms. V.'s brief, ECF
4 No. 8, is granted and the Commissioner's brief, ECF No. 10, is denied.

5 BACKGROUND

6 Ms. V. was 48 years old on the alleged onset date of December 31, 2020. Tr.
7 17, 27. She has work experience performing home care for her sister and daughter
8 and watching her grandchildren. Tr. 45-49. Ms. V. testified she has not worked since
9 2020. Tr. 45.

10 Ms. V. filed this claim for disability insurance benefits and supplemental
11 security income in July 2021. Tr. 286-98. The claim was denied initially and upon
12 reconsideration. Tr. 153-62. Ms. V. appeared at a hearing in August 2023, and
13 alleged she is unable to work primarily due to severe asthma. Tr. 42. She also has
14 bipolar, depression, and anxiety. Tr. 44. She testified that she has difficulty
15 breathing when there is smoke in the air, strong odors like cleaning products, or if
16 she tries to walk for too long. Tr. 50-51. On December 21, 2023, the ALJ issued an
17 unfavorable decision, Tr. 14-36, and the Appeals Council denied review. Tr. 1-6.
18 The matter is now before this Court pursuant to 42 U.S.C. § 405(g).

STANDARD OF REVIEW

This Court’s review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review is limited; the Commissioner’s decision will be disturbed “only if it is not supported by substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). If the evidence in the record “is susceptible to more than one rational interpretation, [the Court] must uphold the ALJ’s findings if they are supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

FIVE-STEP EVALUATION PROCESS

A claimant must satisfy two conditions to be considered “disabled” within the meaning of the Social Security Act. First, the claimant must be “unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s impairment must be “of such severity that he is not only unable to do [his or her] previous work[,] but cannot, considering [his or her] age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.” 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

1 The Commissioner has established a five-step sequential analysis to determine
2 whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§ 404.1520(a)(4)(i)-
3 (v), 416.920(a)(4)(i)-(v). At step one, if the claimant is engaged in “substantial
4 gainful activity,” the Commissioner must find that the claimant is not disabled. 20
5 C.F.R. §§ 404.1520(b), 416.920(b). At step two, the Commissioner considers the
6 severity of the claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii),
7 416.920(a)(4)(ii). If the claimant suffers from “any impairment or combination of
8 impairments which significantly limits [his or her] physical or mental ability to do
9 basic work activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),
10 416.920(c). At step three, the Commissioner compares the claimant’s impairment to
11 severe impairments recognized by the Commissioner to be so severe as to preclude a
12 person from engaging in substantial gainful activity. 20 C.F.R. §§
13 404.1520(a)(4)(iii), 416.920(a)(4)(iii).

14 If the severity of the claimant’s impairment does not meet or exceed the
15 severity of the enumerated impairments, the Commissioner must assess the
16 claimant’s residual functional capacity (RFC), which is the claimant’s ability to
17 perform physical and mental work activities on a sustained basis despite his or her
18 limitations, 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1).

19 At step four, the Commissioner considers whether, in view of the claimant’s
20 RFC, the claimant is capable of performing work that he or she has performed in the
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1 past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). If not,
2 the analysis proceeds to step five and the Commissioner considers whether, in view
3 of the claimant's RFC, the claimant is capable of performing other work in the
4 national economy. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

5 The claimant bears the burden of proof at steps one through four above.
6 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
7 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
8 capable of performing other work; and (2) such work "exists in significant numbers
9 in the national economy." 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2); *Beltran v.*
10 *Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

11 ALJ'S FINDINGS

12 At step one, the ALJ found Ms. V. has not engaged in substantial gainful
13 activity since December 31, 2020, the alleged onset date. Tr. 20. At step two, the
14 ALJ found that Ms. V. has the following severe impairments: asthma, obesity,
15 depression, anxiety, lumbar stenosis, and obstructive sleep apnea. Tr. 20.

16 At step three, the ALJ found that Ms. V. does not have an impairment or
17 combination of impairments that meets or medically equals the severity of one of the
18 listed impairments. Tr. 20. With respect to the RFC, the ALJ found Ms. V. has the
19 capacity to perform light work except she is additionally limited to:

20 frequent climbing ramps or stairs, balancing, stooping, occasional
21 climbing ladders, ropes or scaffolds, kneeling, crouching, and

1 crawling. She can perform frequent right reaching overhead and all
2 other directions. The claimant must avoid concentrated exposure of
3 nonweather related extreme cold, nonweather related extreme heat,
4 excessive industrial vibration, and avoid even moderate exposure to
5 respiratory irritants, and hazards. Work is limited to simple routine
6 tasks with no more than occasional changes in the work setting.

7 Tr. 22.

8 At step four, the ALJ found Ms. V. is unable to perform any past relevant
9 work. Tr. 27. At step five, after considering and Ms. V.'s age, education, work
10 experience, and the RFC, the ALJ found there are other jobs that exist in significant
11 numbers in the national economy that Ms. V. can perform such as routing clerk,
12 sales attendant, and office helper. Tr. 28.

13 Based on the adverse finding at step five, the ALJ determined that Ms. V. has
14 not been under a disability, as defined in the Social Security Act, from December 31,
15 2020, through the date of the decision. Tr. 28.

16 ANALYSIS

17 The ALJ found that Ms. V.'s testimony regarding the intensity, persistence,
18 and limiting effects of her symptoms is not consistent with the evidence in the
19 record. Tr. 22-23. The ALJ also rejected medical opinion evidence from Anne Reed,
20 ARNP, and Raylee Weaver-Jensen, Ph.D., PA-C, who both assessed disabling
21 limitations. Ms. V. contends ALJ erred in rejecting her testimony and in evaluating
the medical opinion evidence. The Court concludes that the ALJ's findings are not
supported by substantial evidence and the ALJ committed reversible error.

ORDER REVERSING AND REMANDING FOR
FURTHER ADMINISTRATIVE PROCEEDINGS ~ 6

A. Symptom Testimony

A two-step process applies to an ALJ's assessment of a claimant's testimony regarding subjective pain and symptoms. "First, the ALJ must determine whether there is objective medical evidence of an underlying impairment which could reasonably be expected to produce the pain or other symptoms alleged." *Molina*, 674 F.3d at 1112 (internal quotation marks omitted). Second, if there is such evidence and there is no sign of malingering, the claimant's testimony should generally be accepted unless there is clear and convincing evidence in support of rejection. *See Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014). "[T]he ALJ can only reject the claimant's testimony about the severity of the symptoms if [the ALJ] gives 'specific, clear and convincing reasons' for the rejection." *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (internal citations and quotations omitted). "General findings are insufficient; rather, the ALJ must identify what testimony is not credible and what evidence undermines the claimant's complaints." *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)).

Here, although the ALJ agreed with Ms. V. that her "medically determinable impairments could reasonably be expected to cause [her] alleged symptoms," the ALJ rejected Ms. V.'s testimony regarding the severity of her symptoms, reasoning that they were "not entirely consistent with the medical evidence and other evidence in the record." Tr. 22-23.

1 According to the Commissioner, the ALJ gave three reasons for discounting
2 Ms. V.'s symptom testimony. ECF No. 10 at 5-18. First, the Commissioner asserts
3 "the ALJ found that [Ms. V.'s] subjective complaints conflicted with the medical
4 evidence." ECF No. 10 at 5 (citing Tr. 23-27). However, the Court identifies no
5 such finding in the ALJ's decision. The ALJ summarized medical records but
6 provided no analysis of any potential conflict in the evidence. The Court is
7 constrained to review only those reasons asserted by the ALJ. *Sec. Exch. Comm'n v.*
8 *Chenery Corp.*, 332 U.S. 194, 196 (1947); *Pinto v. Massanari*, 249 F.3d 840, 847-48
9 (9th Cir. 2001). Although the ALJ summarized the medical record, providing a
10 summary of medical evidence in support of a residual functional capacity finding is
11 not the same as providing clear and convincing reasons for finding the claimant's
12 symptom testimony unsupported. *Brown-Hunter v. Colvin*, 806 F.3d 487, 494 (9th
13 Cir. 2015). Here, the ALJ did not identify any conflicts between the medical
14 evidence and Ms. V.'s testimony. This is not a clear and convincing reason for
15 discounting her symptoms statements.

16 Second, the ALJ found that Ms. V. engaged in activities that undermine her
17 subjective complaints. Tr. 25. The ALJ described some of Plaintiff's testimony, then
18 stated:

19 The claimant's activity level is greater than that report[ed] to
20 the consultative examiners in which she alleged needing
21 assistance from her family members to perform daily activities.
Instead, as per her testimony, she acted as a caregiver, a full-

1 time babysitter, and is able to drive to another state by driving
2 herself. The claimant's activity level does not support a need
for functional limitations not already included in the RFC.

3 Tr. 25. There are several problems with this analysis. First, Ms. V. testified that her
4 activities as caregiver and babysitter occurred before the alleged onset date, Tr. 45-
5 49, and therefore those activities are not inconsistent with her allegations of
6 disabling limitations.³ Tr. 45-49. Second, Ms. V. testified that "[w]e drove" to
7 California for a two-week visit with her friend whose son has cancer and there is no
8 indication that she was the primary or sole driver. Tr. 61. Even so, while travel may
9 in some instances be inconsistent with disability, the ALJ identified nothing in Ms.
10 V.'s testimony indicating that driving or riding to California is inconsistent with her
11 allegations of limitations due to asthma.

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14 ³ The Commissioner contends that "at least some of it went on after [her
15 alleged onset date], because she was paid \$3000 for ongoing care services by the
16 state in 2021." ECF No. 10 at 6 (citing Tr. 45); *see* Tr. 302. Regardless, the ALJ
17 found Ms. V. did not engage in substantial gainful activity after her alleged onset
18 date of December 31, 2020. Tr. 20. Additionally, she testified that she was
19 watching her grandkids in 2021, but she could not handle it and told her daughter
20 to find someone else. Tr. 46.

1 The Commissioner also contends that Ms. V.’s testimony regarding caring for
2 pets in the home is “a likely pulmonary irritant.” ECF No. 10 at 6; Tr. 647.

3 Although the ALJ mentioned Ms. V.’s pets, the ALJ did not draw any conclusion or
4 make any analysis of them related to Ms. V.’s limitations. Tr. 25. Additionally, the
5 medical record cited by the Commissioner mentions Ms. V.’s pets but does not
6 identify them as a source or exacerbator of her symptoms. Tr. 647. The medical
7 evidence does not support this conclusion which, in any event, was not made by the
8 ALJ.

9 Third, the ALJ found that the record shows a “history of noncompliance” and
10 that when Ms. V. was compliant, “her function improved.” Tr. 25. In support, the
11 ALJ cited the entire 71-page Exhibit 18F as evidence of both noncompliance and
12 compliance. Tr. 25. Having reviewed Exhibit 18F, the Court finds this conclusion is
13 neither obvious nor supported by substantial evidence. The records note that in
14 August 2022, Ms. V.’s asthma was “poorly controlled” with numerous symptoms
15 and that she had been “faithful” with her medications “for years.” Tr. 641. In
16 January 2023, she was continuing her asthma medication yet had poorly controlled
17 severe persistent asthma which was “very easily flared” by household cooking (Tr.
18 646, 663); in February 2023, she was consistent with asthma medication as ordered
19 (Tr. 647); and was also compliant with medication in May 2023 (Tr. 641). The Court
20 notes one record from September 2022 indicating Ms. V. reported she was not able
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1 to get a Spiriva refill from the pharmacy in a timely manner. She had increased
2 allergy symptoms and coughing due to wildfire smoke, but she was able to increase
3 albuterol use in the meantime. Tr. 675. This does not establish a “history of
4 noncompliance” in the record.

5 As further evidence of noncompliance, the ALJ cited a July 2022 emergency
6 room record for an acute asthma exacerbation wherein Ms. V. reported that she had
7 been having shortness of breath for the previous 1-2 weeks and had needed to use
8 her inhaler several times per day. She had not taken her Advair for four days because
9 she lost it. Tr. 733-34. One instance of losing medication does not reasonably
10 demonstrate noncompliance with treatment.

11 Other evidence cited by the ALJ involved an emergency room visit in March
12 2023 due to throat pain and feeling like her throat was closing for one week. Tr. 801.
13 She had taken a dose of epinephrine pen but not a dose of her asthma medication
14 that day. Tr. 801. There is no evidence in the record suggesting her symptoms which
15 had been occurring for one week were caused by not taking her asthma medication
16 on the day she sought treatment. This does not reasonably support a finding of
17 noncompliance.

18 The Commissioner also cites other records purportedly suggesting
19 noncompliance with CPAP treatment. ECF No. 10 at 7 (citing Tr. 641, 646-47, 658,
20 702). The ALJ noted that Ms. V. was not on CPAP, Tr. 24-25 (citing *e.g.*, Tr. 523,
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682), but the record also indicates that she “could not get a PAP paid for by insurance, and could not afford to purchase cash. She has gone without.” Tr. 654; *see also* Tr. 523 (“at the time she was diagnosed her insurance did not cover it”). Disability benefits may not be denied because of the claimant’s failure to obtain treatment she cannot obtain for lack of funds. *Gamble v. Chater*, 68 F.3d 319, 321 (9th Cir. 1995). Additionally, the ALJ acknowledged that Ms. V.’s insurance did not approve her for CPAP until May 2023, and she testified that she finally got one in June 2023. Tr. 25 (citing Tr. 785-92). The CPAP records do not support a finding of a history of noncompliance.

The ALJ failed to provide any legally sufficient reasons supported by substantial evidence for discounting Ms. V.’s symptom testimony. As such, the matter must be remanded.

B. Medical Opinions

Ms. V. contends the ALJ failed to properly consider the opinions of Anne Reed, ARNP, and Raylee Weaver-Jensen, Ph.D., PA-C. The regulations provide that an ALJ must consider and evaluate the persuasiveness of all medical opinions or prior administrative medical findings from medical sources. 20 C.F.R. §§ 404.1520c, 416.920c. Supportability and consistency are the most important factors in evaluating the persuasiveness of medical opinions and prior administrative findings, and therefore the ALJ is required to explain how both factors were considered. 20

1 C.F.R. §§ 404.1520c(b)(2), 416.920c(b)(2). The ALJ may, but is not required, to
2 explain how other factors were considered. 20 C.F.R. §§ 404.1520c(b)(2),
3 416.920c(b)(2); *see* 20 C.F.R. §§ 404.1520c(c)(1)-(5), 416.920c(c)(1)-(5).

4 *1. Raylee Weaver-Jensen, Ph.D., PA-C*

5 In May 2022, Ms. Weaver-Jensen completed a Medical Report form and listed
6 diagnoses of severe persistent asthma and major depressive disorder. Tr. 535-37. She
7 opined that Ms. V. needs to lie down during the day and the Ms. V. is “[u]nable to
8 exert self for most of waking hours.” Tr. 535. She indicated that work on a regular
9 and continuing basis would cause Ms. V.’s condition to deteriorate because she is
10 unable to tolerate prolonged sitting or standing, and that she would miss four or
11 more days of work per month. Tr. 536. Ms. Weaver-Jensen opined that Ms. V. is
12 severely limited, or unable to meet the demands of full-time sedentary work. Tr.
13 536.

14 The ALJ found Ms. Weaver-Jensen’s opinion unpersuasive. Tr. 25. With
15 regarding to consistency, the ALJ found the opinion is “inconsistent with the
16 longitudinal record that shows the claimant’s history of non-compliance.” Tr. 25.
17 As discussed above, the ALJ’s finding of a history of noncompliance is not
18 supported by substantial evidence. The ALJ also found that Ms. V.’s activity level as
19 caregiver, childcare provider, and driving to California indicates that she is more
20 capable than opined. Tr. 25. As discussed above, the ALJ’s finding regarding Ms.
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1 V.'s activity level is not supported by substantial evidence. Because the ALJ's
2 reasons for finding Ms. Weaver-Jensen's opinion unpersuasive are not based on
3 substantial evidence, the ALJ's finding is legally insufficient.

4 2. *Anne Reed, ARNP*

5 In March 2022, Ms. Reed completed a physical evaluation and listed
6 diagnoses of severe asthma, allergy induced asthma and allergic rhinitis causing
7 asthma exacerbations, sleep apnea, and memory loss. Tr. 522-31. She opined Ms. V.
8 is limited to less than two hours standing/walking; she can sit at least four to six
9 hours; lifting and carrying is limited to less than 10 pounds occasionally and
10 frequently; she can never climb, occasionally balance, stoop, kneel, crouch, and
11 crawl; she can occasionally handle, finger, feel, and reach; and can never work at
12 height or around heavy machinery, and she must never work around extreme
13 temperature, chemical dust, fumes, or gases. Tr. 529.

14 Regarding consistency, the ALJ found the limitations assessed by Ms. Reed
15 are inconsistent with Ms. V.'s history of medical noncompliance and activity levels
16 based on caregiving, providing childcare, and driving to California. Tr. 26. As
17 discussed above, the ALJ's reliance on medical noncompliance and Ms. V.'s activity
18 levels are not based on substantial evidence and therefore legally insufficient.

19 Regarding supportability, the ALJ found the "extreme" limitations assessed by
20 Ms. Reed are unsupported by her exam findings. Tr. 26. The Court does not reach
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1 this portion of the ALJ's reasoning. Because the ALJ failed to properly consider Ms.
2 V.'s testimony and the opinion of Ms. Weaver-Jensen, and because the ALJ's
3 consistency finding is also based on error, the matter must be remanded for
4 reconsideration and a new sequential evaluation.

5 **C. Remedy**

6 Ms. V. requests remand for immediate award of benefits. ECF No. 8 at 19. To
7 do so, the Court must find the record has been fully developed and further
8 administrative proceedings would not be useful. *Garrison*, 759 F.3d at 1019-20;
9 *Varney v. Sec. of Health and Human Servs.*, 859 F.2d 1396, 1399 (9th Cir. 1988).
10 But where there are outstanding issues that must be resolved before a determination
11 can be made, and it is not clear from the record that the ALJ would be required to
12 find a claimant disabled if all the evidence were properly evaluated, remand is
13 appropriate. *See Benecke v. Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004);
14 *Harman v. Apfel*, 211 F.3d 1172, 1179-80 (9th Cir. 2000).

15 Here, it is not clear from the record that the ALJ would be required to find
16 Ms. V. disabled if the evidence was properly evaluated. Further proceedings are
17 necessary for the ALJ to consider reconsider the medical opinion evidence and Ms.
18 V.'s symptom testimony and conduct a new sequential evaluation.

CONCLUSION

Having reviewed the record and the ALJ's findings, this Court concludes the ALJ's decision is not supported by substantial evidence and free of harmful legal error.

Accordingly,

1. Ms. V.'s Brief, **ECF No. 8**, is **GRANTED**.

2. Defendant's Brief, **ECF No. 10**, is **DENIED**.

3. This case is **REVERSED** and **REMANDED** for further administrative proceedings consistent with this Order pursuant to sentence four of 42 U.S.C. § 405(g).

IT IS SO ORDERED. The District Court Executive is directed to enter this Order and provide copies to counsel. Judgment shall be entered for Plaintiff and the file shall be **CLOSED**.

DATED June 26, 2025.



REBECCA L. PENNELL
United States District Judge